

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF ILLINOIS EASTERN DIVISION**

David Goulding, Howard Salamon, Robin Goulding)
and John O'Shea)

Plaintiffs `)

vs.)

Mark Miller)

Defendant)

) Case No. 1:22-cv-05224

) Judge Sharon Johnson Coleman

) Magistrate Judge Finnegan

DEFENDANT'S MOTION FOR SANCTIONS

Now comes the Defendant Mark Miller, by his attorneys, and moves for an order pursuant to Federal Rules of Civil Procedure 37 for failure to respond to document requests for the following reasons:

1. On April 1, 2024, Defendant propounded Defendant's First Request For Documents And Information pursuant to Federal Rule of Civil Procedure 34 on Plaintiffs' counsel to be responded to on or before April 30, 2024 (See attached Exhibit 1);
2. The parties engaged in settlement conferences in May of 2024, which did not result in a settlement.
3. On May 30, 2024, counsel for Defendant sent an email to counsel for Plaintiffs declaring that he would file a motion to compel responses to Defendant's discovery requests (See attached Exhibit 2);
4. On June 5, 2024, counsel for Plaintiffs responded to the May 30, 2024 email by stating that responses would be provided "when I get back from my vacation after June 17." (See attached Exhibit 2).
5. To date, Defendant still has not received any responses to his discovery requests.

Rule 37 of the Federal Rules of Civil Procedure (“FRCP”) states:

Rule 37 (a) MOTION FOR AN ORDER COMPELLING DISCLOSURE OR DISCOVERY.

(1) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action...

(3) Specific Motions.

(B)(iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under [Rule 34](#)...

(d) PARTY'S FAILURE TO ATTEND ITS OWN DEPOSITION, SERVE ANSWERS TO INTERROGATORIES, OR RESPOND TO A REQUEST FOR INSPECTION.

(1) *In General.*

(A) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

(ii) a party, after being properly served with interrogatories under [Rule 33](#) or a request for inspection under [Rule 34](#), fails to serve its answers, objections, or written response.

FRCP Rule 37 further states that the types of sanctions for violations of 37(d) may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi), which include:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party;

Defendant has made several attempts to resolve the issue and still has not received any responses to his discovery requests. (See attached Exhibit 4). Wherefore, Defendant moves for an order dismissing the action in whole or for other relief as the Court deems just.

Respectfully Submitted,

Thomas F. Burke

Thomas F. Burke
Johnson & Bell, Ltd.
33 W. Monroe, Suite 2700
Chicago, IL 60603